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ARIZONA ATTORNEY GENERAL

Dear Mr. Myers:

This is in reply to your oral request of March 27, 1953, for an opinion relative to whether a duly elected member of the Legislature may accept an appointment, pursuant to the authority of Section 68-1026, A.C.A. 1939, as a director of a newly created sanitary district.

It is firmly settled that where, as by Chapter 31, Session Laws of 1941, providing for sanitary districts, a position may be created pursuant to statute imposing upon the holder certain definite duties involving the exercise of some portion of sovereign power, such position is a public office. *STAPLETON v. FROHMILLER* (1938), 53 Ariz. 11. Especially is this true in the case of the directors of a sanitary district where by constitutional provision, such a district is made a political subdivision of the state. Article 13, Section 7, Arizona Constitution.

Since a director of a sanitary district is a public officer, we feel that the appointment to such an office of a member of the Legislature is directly affected by the provisions contained in Article 4, Part 2, Section 5, Arizona Constitution, which reads as follows:

"§5. (Appointment to new offices.) No member of the legislature, during the term for which he shall have been elected or appointed shall be eligible to hold any other office or be otherwise employed by the state of Arizona, or any county or incorporated city or town thereof. This prohibition shall not extend to the office of school trustee, nor to employment as a teacher or instructor in the public school system." (Emphasis supplied)

In view of the express prohibition contained in the above cited constitutional provision, we conclude that a member of the Legislature may not accept the office of director of a sanitary district.

Sincerely,

To the Honorable Robert L. Myers
House of Representatives
State Capitol
Phoenix, Arizona

March 28, 1953

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DSW:CG